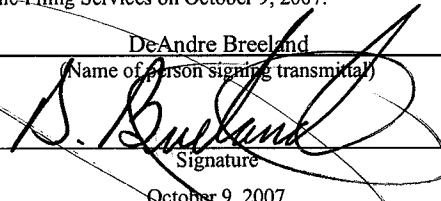## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants   :   Seiji Kawa, et al.

Appl. No.   :   10/809,216

Filed   :   March 25, 2004

Title   :   INFORMATION CREATING APPARATUS, INFORMATION
                        CREATING METHOD, REPRODUCING APPARATUS,
                   :   REPRODUCING METHOD, AND PROGRAM

Art Unit   :   2178

Examiner   :   Faber, David

Confirmation No.   :   6582

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being transmitted via
Electronic-Filing Services on October 9, 2007.

DeAndre Breeland
(Name of person signing transmittal)

Signature

October 9, 2007
Date of Signature

APPEAL BRIEF OF APPELLANTS
AND PETITION FOR EXTENSION OF TIME

Appeal Briefs-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby petition for a four-month extension of time from the Notice of Panel

Decision mailed on May 14, 2007 having an extended period for response set to expire on

October 15, 2007 (October 14, 2007 being a Sunday). Appellants submit an electronic payment

in the amount of $1640.00 as payment of the extension fee. This is an Appeal from the Final

Office Action dated December 12, 2006, which was issued in the above-identified application,

finally rejecting claims 1, 3-9, and 11-14, and from the Panel Decision dated on May 14, 2007,

confirming the rejections. A Notice of Appeal was filed on March 15, 2007. This Brief is

accompanied by an electronic payment $510.00 as payment of the requisite fee set forth in 37

C.F.R. §41.20(b)(2).

i   REAL PARTY IN INTEREST

The real party in interest is Sony Corporation, a Japanese Corporation with offices at 7-

35 Kitashinagawa 6-chome, Shinagawa-ku, Tokyo, 141-0001 Japan. The assignment of this

application is recorded in the United States Patent and Trademark office on August 9, 2004 at

Reel 015658 and Frame 0771.

ii   RELATED APPEALS AND INTERFERENCES

Upon information and belief, the undersigned attorney does not believe that there is any

appeal or interference that will directly affect, be directly affected by or have a bearing on the

Board's decision in the pending appeal.

iii   STATUS OF THE CLAIMS

The Application was filed with claims 1-14 on March 25, 2004, and assigned Application

Serial No. 10/809,216. This application claims the benefit of Japanese Patent Application No.

2003-086986, filed on March 27, 2003.

The Examiner issued an Office Action on May 4, 2006 rejecting claims 1-14. Claim 5 was rejected under 35 U.S.C. §112, second paragraph. Claim 1 was rejected under 35 U.S.C. §112, six paragraph. Claims 1-6, 8, 9-12, and 14 were rejected under 35 U.S.C. §101. Claims 1 and 3-14 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by EP 0855714 A2 to Yasuda et al. (hereinafter, merely "Yasuda"). Claim 2 was rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Yasuda in view of WO 99/48096 to Kelly et al. (hereinafter, merely "Kelly").

Appellants filed a reply canceling claims 2 and 10 and amending claims 1, 5, 7, 8, 9, 13, and 14 on November 1, 2006.

The Examiner issued a Final Office Action on December 12, 2006 rejecting claims 1, 3-9, and 11-14. Claim 1 was rejected under 35 U.S.C. §112, six paragraph. Claims 1-6, 9, and 11-12 were rejected under 35 U.S.C. §101. Claims 9 and 11-14 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Yasuda et al. (hereinafter, merely "Yasuda"). Claims 1 and 3-8 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Yasuda in view of WO 99/48096 to Kelly et al. (hereinafter, merely "Kelly").

Appellants filed a reply on January 29, 2007 making an argument without amendment to the claims.

The Examiner issued an Advisory Action on February 21, 2007.

A Notice of Appeal was filed by Appellants on March 15, 2007. This Appeal Brief is being filed pursuant to this Notice of Appeal. Accordingly, the status of the claims may be summarized as follows:

Claims Allowed:	None.
Claims Rejected:	1, 3-9, and 11-14.
Claims Appealed:	1, 3-9, and 11-14.

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Claims Canceled: 2 and 10

The rejected claims 1, 3-9, and 11-14 are set forth in the Appendix attached hereto.

Appellants appeal the Final Rejection of claims 1, 3-9, and 11-14, which constitute all of

the currently pending claims in this application.

iv   STATUS OF THE AMENDMENTS

Appellants believe that all the submitted Amendments to the claims have been entered.

v   SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claims 1, 7, 8, 9, 13, and 14 are summarized below. Citations to Figures and

Specification locations are provided. However, such citations are provided merely as examples

and are not intended to limit the interpretation of the claims or to evidence or create any estoppel.

Independent claim 1 is directed to an information creating apparatus that creates

information to be provided to a reproducing apparatus for reproducing data. The information

creating apparatus includes first acquiring means (read unit (30) in Figure 2 and page 12, lines 3-

12 and page 33, lines 11-16) that acquires edit point information describing an edit point set for

the data.

The information creating apparatus also includes creating means (play list creating unit

(28) in Figure 2 and page 12, lines 3-12 and page 32, lines 15-32) that creates reproduction

control information in accordance with the edit point information acquired by the first acquiring

means. The reproduction control information results from an editing process based on the edit

point and controlling reproduction of the data. The information creating apparatus also includes

determining means (real-time reproduction feasibility determining unit (24) in Figure 2 and page 12, lines 3-12 and page 24, lines 6-12) that determines whether it is possible for the reproducing apparatus to reproduce in real time the data resulting from the editing process.

The information creating apparatus further includes relocating means (bridge clip creating unit (26) in Figure 2 and page 12, lines 3-12 and page 29, line 12) that relocates data in proximity of the edit point if the determining means (see above) determines that it is impossible for the reproducing apparatus to reproduce in real time the data resulting from the editing process. The creating means (see above) creates the reproduction control information including information for indicating the data relocated by the relocating means (see above) as a reproduction object, and the relocating means (see above) determines the location at which to create data in proximity of the edit point in accordance with the result of the determining means(see above).

Independent claim 7 is directed to an information creating method that creates information to be provided to a reproducing apparatus for reproducing data. The information creating method includes a step of acquiring edit point information describing an edit point set for the data (S1 in Figure 12 and page 62, lines 16-22). The information creating method also includes a step of creating reproduction control information in accordance with the edit point information acquired in the acquiring step (S2 and S3 in Figure 12 and pages 66-68).

The reproduction control information results from an editing process based on the edit point and serving to control reproduction of the data. The information creating method further includes a step of determining whether it is possible for the reproducing apparatus to reproduce in real time the data resulting from the editing process (S4 in Figure 12 and page 68, line 13 to page 69, line19). Furthermore, the information creating method includes a step of relocating

data in proximity of the edit point if it is impossible for the reproducing apparatus to reproduce

in real time the data resulting from the editing process (S6-S8 in Figure 12 and page 70, line 11

to page 72, line 12). The creating reproduction control information includes information for

indicating the data relocated as a reproduction object, and the relocating data determines the

location at which to create data in proximity of the edit point.

Independent claim 8 is directed to a program, recorded on a computer-readable medium,

which causes a computer to create information according to the information creating method of

claim 7.

Independent claim 9 is directed to a reproducing apparatus. The reproducing apparatus

includes acquiring means (read unit (121) in Figure 6 and page 36, lines 10-16 and page 36, line

23 to page 37, line 9) that acquires reproduction control information, which is created in

accordance with edit point information describing an edit point set for data and which serves to

control reproduction of the data.

The reproduction apparatus also includes reproducing means (reproduction apparatus

(101) in Figure 7 and page 38, lines 3-11) that reproduces the data in accordance with the

reproduction control information acquired by the acquiring means. The reproducing apparatus

further includes determining means (controller (153) in Figure 7 and page 39, lines 1-24) and

selecting means (switch (156) in Figure 7 and page 40, line 11 to page 41, line 3) that is used

when the reproduction control information includes information for indicating as a reproduction

object data, which are relocated by an information creating apparatus for creating the

reproduction control information and which are in proximity of the edit point.

The determining means (see above) determines a location at which to start reproducing

the data in accordance with the reproduction control information. The selecting means (see

above) selects a decoder for reproducing the data, wherein the reproducing means reproduces the

data based on the reproduction control information, on the starting location determined by the

determining means(see above), and on the decoder selected by the selecting means (see above).

The selecting means (see above) selects a decoder from a plurality of decoders in accordance

with the reproduction control information which includes designation information.

Independent claim 13 is directed to a reproducing method. The reproduction method

includes a step of acquiring reproduction control information (S31 in Figure 20 and page 79,

lines 11-13), which is created in accordance with edit point information describing an edit point

set for data and which serves to control reproduction of the data. The reproduction method also

includes a step of reproducing the data in accordance with the reproduction control information

acquired in the acquiring step (S37 in Figure 20 and page 81, lines 5-8). The reproduction

method further includes a step of determining (S35 in Figure 20 and page 80, lines 15-24) and

selecting (S34 in Figure 20 and page 80, lines 9-17) when the reproduction control information

includes information for indicating as a reproduction object data, which are relocated by an

information creating apparatus that creates the reproduction control information and which are in

proximity of the edit point, wherein determining a location at which to start reproducing the data

in accordance with the reproduction control information.

The determining and selecting step selects a decoder for reproducing the data, reproduces

the data based on the reproduction control information, on the starting location determined, and

on the decoder selected, and selects a decoder from a plurality of decoders in accordance with

the reproduction control information which includes designation information.

Independent claim 14 is directed to a program recorded on a computer-readable medium,

which is readable by a computer. The program causes the computer to reproduce information

according to the reproducing method in claim 13.

vi   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claim 1 was rejected under 35 U.S.C. §112, six paragraph.

Claims 1-6, 9, and 11-12 were rejected under 35 U.S.C. §101.

Claims 9 and 11-14 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by EP

0855714 A2 to Yasuda et al. (hereinafter, merely "Yasuda").

Claims 1 and 3-8 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over

Yasuda in view of WO 99/48096 to Kelly et al. (hereinafter, merely "Kelly").

vii   ARGUMENTS

I.   OBJECTION TO DRAWINGS

A substitute Specification has been supplied, thereby obviating the objection to

the Drawings. A "mark-up" copy of the substitute Specification was previously submitted

(document no. 402152) and a "clean copy" of the substitute specification was also previously

submitted (document no. 402159).

II.   INDEPENDENT CLAIMS

A.   REJECTIONS UNDER 35 U.S.C. §112

Claim 1 was rejected under 35 U.S.C. §112, six paragraph.

Appellants submit that "first acquiring means for acquiring edit point information

describing an edit point set for the data" in claim 1 provides a clear means plus function step

within the bounds of an apparatus. Support to this feature is provided throughout the

Specification, especially at read unit (30) in Figure 2 and page 12, lines 3-12 and page 33, lines

11-16.

Appropriate withdrawal and reconsideration is requested.

B.   REJECTIONS UNDER 35 U.S.C. §101

Claims 1-6, 9, and 11-12 were rejected under 35 U.S.C. §101.

Appellants submit that claims 1-6, 9, 11 and 12 refer are apparatus claims and therefore

comply with the statutory subject matter requirement.

Appropriate withdrawal and reconsideration is requested.

C.   REJECTIONS UNDER 35 U.S.C. §103

Claims 1 and 3-8 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable

over Yasuda in view of Kelly.

Independent claim 1, recites, *inter alia*:

"An information creating apparatus for creating information to be
provided to a reproducing apparatus for reproducing data, said
information creating apparatus comprising:

…**determining means for determining whether it is possible for
said reproducing apparatus to reproduce in real time said data
resulting from said editing process; and**

**relocating means for relocating data in proximity of said edit
point if said determining means determines that it is impossible
for said reproducing apparatus to reproduce in real time said
data resulting from said editing process; and**

**wherein said creating means creates said reproduction
control information including information for indicating said**

> **data relocated by said relocating means as a reproduction object, and**
>
> **wherein said relocating means determines the location at which to create data in proximity of the edit point in accordance with the result of the determining means."**
> (emphasis added)

First, the Office Action mailed on December 12, 2006 (see page 8), relies on page 1, lines 1-5 and page 5, lines 15-35 of Kelly to reject "determining means for determining whether it is possible for said reproducing apparatus to reproduce in real time said data resulting from said editing process", as recited in claim 1 (emphasis added). As understood by Appellants, Kelly relates to an apparatus for recording a real time information signal (Kelly, page 1, lines 1-5). Kelly discloses that for real-time data, a disc system is addressed on a fragment-related basis and for non-real-time data, the disc system may be addressed on a sector basis and for realizing real-time reproduction in all situations, the fragment areas need to be a specific size (Kelly, page 5, lines 15-35). Appellants submit that, which Kelly suggests determining whether a data is real time or not and a way to ensure real-time production in different situations, Kelly fails to teach or suggest how to determine whether the reproducing process itself is able to produce real-time data or not. Therefore, Appellants submit that Kelly fails to teach or suggest "determining means for determining whether it is possible for said reproducing apparatus to reproduce in real time said data resulting from said editing process", as recited of claim 1 (emphasis added). Appellants further submit that Yasuda and Kelly, taken alone or in combination, fail to disclose or suggest that above-identified features of claim 1.

Second, the Office Action mailed on December 12, 2006 (see page 8), relies on column 5, lines 52-54 of Yasuda to reject "relocating means for relocating data in proximity of said edit point if said determining means determines that it is impossible for said reproducing

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apparatus to reproduce in real time said data resulting from said editing process", as recited in claim 1 (emphasis added). The cited portion of Yasuda discloses that "this reproduction information on the reproduction interval contains a data on a reproduction start point, a preproduction end point or preproduction interval length, and the like." The Office Action reads the above cited portion of Yasuda as "contains a data on a reproduction start point and end point for relocating (reproduction) data. In addition, when reproducing data, data is being created." (see Office Action, page 8, emphasis added). Appellants respectfully disagree with Examiner's decision. Yasuda' reproduction information includes sector address of the starting point, a period of time, and the like as listed at page 5, lines 50-60 of Yasuda. Appellants submit that address, period of time and the like are not the data that need to be reproduced. Appellants first submit that Yasuda's reproduction information does not contain data that need to be reproduced as claimed by Appellants as "relocating data in proximity of said edit point". Second, Appellants submit that reproducing data and relocating data are different matters. Therefore, Appellants submit that Yasuda fails to disclose or suggest the above-identified features of claim 1. Appellants further submit that Yasuda and Kelly, taken alone or in combination, fail to disclose or suggest that above-identified features of claim 1.

Furthermore, Appellants submit that Yasuda and Kelly, taken alone or in combination, fail to disclose or suggest "wherein said creating means creates said reproduction control information including information for indicating said data relocated by said relocating means as a reproduction object, and wherein said relocating means determines the location at which to create data in proximity of the edit point in accordance with the result of the determining means", as recited in claim 1 (emphasis added).

Therefore, Appellants submit that independent claim 1 is patentable and should be allowed.

For reasons similar to those described above with regard to independent claim 1, independent claims 7 and 8 are also believed to be patentable and should be allowed.

Therefore, Appellants submit that independent claims 1, 7 and 8 are patentable and should be allowed.

D.   REJECTIONS UNDER 35 U.S.C. §102(b)

Claims 9 and 11-14 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Yasuda.

Claim 9 recites, *inter alia*:

"A reproducing apparatus comprising:

...**determining means and selecting means for use when said reproduction control information includes information for indicating as a reproduction object data, which are relocated by an information creating apparatus for creating said reproduction control information and which are in proximity of said edit point**" (emphasis added)

Appellants submit that Yasuda fails to teach or suggest the features of claim 9. Specifically, Appellants submit that there is no teaching or suggestion in Yasuda of reproducing apparatus comprising: determining means and selecting means for use when said reproduction control information includes information for indicating as a reproduction object data, which are relocated by an information creating apparatus for creating said reproduction control information and which are in proximity of said edit point, as recited in claim 9.

Indeed, Appellants submit that Yasuda does not select a decoder based on any kinds of control information, as disclosed in the present invention in Figures 26 and 31 where a

decoder is selected from a plurality of decoders in accordance with the reproduction control information which includes designation information such as the description [decoder = "0"] (Fig. 26) and the preDecBegin attribute (Fig. 31).

Therefore, Appellants submit that independent claim 9 is patentable and should be allowed.

For reasons similar to those described above with regard to independent claim 9, independent claims 13 and 14 are also believed to be patentable and should be allowed.

Therefore, Appellants submit that independent claims 9, 13 and 14 are patentable and should be allowed.

The other claims in this application are each dependent from one of the independent claims discussed above, and are therefore patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.
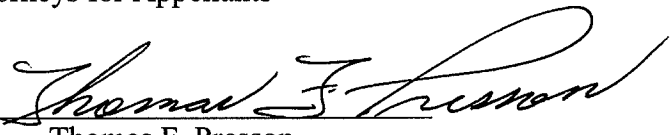
CONCLUSION

For the reasons discussed above, claims 1, 3-9, and 11-14 are patentable. It is,

therefore, respectfully submitted that the Examiner erred in rejecting claims 1, 3-9, and 11-14,

and Appellants request a reversal of these rejections.

The Commissioner is hereby authorized to charge any additionally required fee,

or to credit any overpayment in such fees, to Deposit Account No. 50-0320.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Appellants

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APPENDIX I

CLAIMS ON APPEAL

1.   (Previously Presented) An information creating apparatus for creating information to be provided to a reproducing apparatus for reproducing data, said information creating apparatus comprising:

first acquiring means for acquiring edit point information describing an edit point set for said data;

creating means for creating reproduction control information in accordance with said edit point information acquired by said first acquiring means, said reproduction control information resulting from an editing process based on said edit point and serving to control reproduction of said data;

determining means for determining whether it is possible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and

relocating means for relocating data in proximity of said edit point if said determining means determines that it is impossible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and

wherein said creating means creates said reproduction control information including information for indicating said data relocated by said relocating means as a reproduction object, and

wherein said relocating means determines the location at which to create data in proximity of the edit point in accordance with the result of the determining means.

2.   (Canceled)

3.   (Original) The information creating apparatus according to claim 1,

wherein said creating means creates said reproduction control information including information

for designating a decoder of said reproducing apparatus for use in reproducing said data.

4.   (Original) The information creating apparatus according to claim 1,

further comprising determining means for determining a location at which said reproducing

apparatus starts reproducing said data;

wherein said creating means creates said reproduction control information

including information for designating the starting location determined by said determining

means.

5.   (Previously Presented) The information creating apparatus according to

claim 4, wherein said creating means creates said reproduction control information including

information for designating said starting location determined by said determining means using

address information being processed by said reproducing apparatus.

6.   (Original) The information creating apparatus according to claim 1,

further comprising second acquiring means which, if said data are constituted by pictures, then

acquires picture information about said pictures;

wherein said creating means creates said reproduction control information

in accordance with said picture information acquired by said second acquiring means.

7.   (Previously Presented) An information creating method for creating

information to be provided to a reproducing apparatus for reproducing data, said information

creating method comprising the steps of:

acquiring edit point information describing an edit point set for said data;

creating reproduction control information in accordance with said edit point information acquired in said acquiring step, said reproduction control information being resulting from an editing process based on said edit point and serving to control reproduction of said data;

determining whether it is possible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and

relocating data in proximity of said edit point if it is impossible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and

wherein said creating reproduction control information includes information for indicating said data relocated as a reproduction object, and

wherein said relocating data determines the location at which to create data in proximity of the edit point.

8.   (Previously Presented) A program, recorded on a computer-readable medium, for causing a computer to create information to be provided to a reproducing apparatus for reproducing data, said program comprising the steps of:

acquiring edit point information describing an edit point set for said data;

creating reproduction control information in accordance with said edit point information acquired in said acquiring step, said reproduction control information resulting from an editing process based on said edit point and serving to control reproduction of said data;

determining whether it is possible for said reproducing apparatus to reproduce in real time said data resulting from said editing process; and

relocating data in proximity of said edit point if it is impossible for said

reproducing apparatus to reproduce in real time said data resulting from said editing process; and

wherein said creating reproduction control information includes

information for indicating said data relocated as a reproduction object, and

wherein said relocating data determines the location at which to create

data in proximity of the edit point.

9.   (Previously Presented) A reproducing apparatus comprising:

acquiring means for acquiring reproduction control information, which is created

in accordance with edit point information describing an edit point set for data and which serves

to control reproduction of said data;

reproducing means for reproducing said data in accordance with said reproduction

control information acquired by said acquiring means; and

determining means and selecting means for use when said reproduction control

information includes information for indicating as a reproduction object data, which are

relocated by an information creating apparatus for creating said reproduction control information

and which are in proximity of said edit point,

wherein said determining means determines a location at which to start

reproducing said data in accordance with said reproduction control information,

wherein said selecting means selects a decoder for reproducing said data,

wherein said reproducing means reproduces said data based on said

reproduction control information, on the starting location determined by said determining means,

and on said decoder selected by said selecting means, and

wherein the selecting means selects a decoder from a plurality of decoders

in accordance with the reproduction control information which includes designation information.

10.   (Canceled)

11.   (Original) The reproducing apparatus according to claim 9, further

comprising determining means for use when said reproduction control information includes

information for indicating as a reproduction object data, which are relocated by an information

creating apparatus for creating said reproduction control information and which are in proximity

of said edit point, and information for designating a decoder for reproducing said data;

wherein said determining means determines a location at which to start

reproducing said data in accordance with said reproduction control information; and

wherein said reproducing means reproduces said data based on said

reproduction control information and on the starting location determined by said determining

means.

12.   (Original) The reproducing apparatus according to claim 9, wherein, if

said reproduction control information includes information for indicating as a reproduction

object data, which are relocated by an information creating apparatus for creating said

reproduction control information and which are in proximity of said edit point, information for

designating a decoder for reproducing said data, and information for designating a location at

which to start reproducing said data, then said reproducing means reproduces said data solely in

accordance with said reproduction control information.

13.   (Previously Presented) A reproducing method comprising the steps of:

acquiring reproduction control information, which is created in accordance with

edit point information describing an edit point set for data and which serves to control

reproduction of said data;

reproducing said data in accordance with said reproduction control information

acquired in said acquiring step; and

determining and selecting when said reproduction control information includes

information for indicating as a reproduction object data, which are relocated by an information

creating apparatus for creating said reproduction control information and which are in proximity

of said edit point,

wherein determining a location at which to start reproducing said data in

accordance with said reproduction control information,

wherein selecting a decoder for reproducing said data,

wherein reproducing said data based on said reproduction control

information, on the starting location determined, and on said decoder selected, and

wherein selecting a decoder from a plurality of decoders in accordance

with the reproduction control information which includes designation information.

14.   (Previously Presented) A program recorded on a computer-readable

medium, which is readable by a computer, comprises the steps of:

acquiring reproduction control information, which is created in accordance with

edit point information describing an edit point set for data and which serves to control

reproduction of said data;

reproducing said data in accordance with said reproduction control information

acquired in said acquiring step; and

determining and selecting when said reproduction control information includes

information for indicating as a reproduction object data, which are relocated by an information

creating apparatus for creating said reproduction control information and which are in proximity

of said edit point,

wherein determining a location at which to start reproducing said data in

accordance with said reproduction control information,

wherein selecting a decoder for reproducing said data,

wherein reproducing said data based on said reproduction control

information, on the starting location determined, and on said decoder selected, and

wherein selecting a decoder from a plurality of decoders in accordance with the

reproduction control information which includes designation information.

APPENDIX II

EVIDENCE

None

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APPENDIX III

RELATED PROCEEDINGS

None